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In the Supreme Court of the United States

OCTOBER TERM, 1974

ELMER B. STAATS, COMPTROLLER-GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

v.

AMERICAN CIVIL LIBERTIES UNION, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUGGESTION OF MOOTNESS

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The issue in this case is the constitutionality of Section 104(b) of the Federal Election Campaign Act of 1971, which is part of Title I of that Act. Section 104 imposes dollar limits upon spending for the use of communications media by candidates for federal office in both primary and general elections and provides certain procedures by which such limitations are enforced in connection with the publication for a charge of political advertisements by the media. A three-judge court held Section 104(b) unconstitutional, and this Court noted probable jurisdiction of the appeal on June 10, 1974. 417 U.S. 944.

On October 15, 1974, the President signed the Federal Election Campaign Act Amendments of 1974, Pub. L. 93-443, 88 Stat. 1263 *et seq*. That Act, which became effective January 1, 1975, made major changes in the law governing federal election campaigns. It also created the Federal Election Commission to administer the new law.

Section 205(b) of the 1974 Amendments, 88 Stat. 1278, repealed Title I of the 1971 Act. Section 208(b) of the Amendments, however, provided that until all members of the Federal Election Commission and its general counsel had been appointed and qualified and until the transfer, within 30 days of the date of the appointment of the foregoing officials, of certain records to the Commission by the Comptroller General, the Secretary of the Senate and the Clerk of the House of Representatives (who had certain responsibilities in connection with the administration of the 1971 Act), the latter three individuals "shall continue to carry out their responsibilities under" Titles I and III of the 1971 Act.

The members of the Federal Election Commission and its general counsel have been appointed, and the transfer of records was made on May 30, 1975. See 40 Fed. Reg. 23832 (June 2, 1975).

The present case is now moot, since it involves the constitutionality of a provision of an Act of Congress that has been repealed and is no longer operative. Accordingly, the judgment of the district court should be vacated, and the case should be remanded to that court

with instructions to dismiss the complaint as moot. *United States* v. *Munsingwear, Inc.*, 340 U.S. 36.[1]

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

JUNE 1975.

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[1]In their brief on the merits, filed in March 1975, appellees recognized that the case was moot (Br. 16-22), but suggested that the case should be remanded to the district court "to allow Appellees to amend their complaint to challenge those provisions of the new law which may affect them" (Br. 22). The constitutionality of the 1974 Amendments, however, presents different issues, and there is no occasion to permit the present complaint to stand. Indeed, the validity of the new amendments is now being litigated before the United States Court of Appeals for the District of Columbia Circuit in a suit in which appellee New York Civil Liberties Union, Inc., is a party-plaintiff. *Buckley* v. *Valeo*, No. 75-1061.